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In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-474

STATE, EX REL JEFFERSON PARISH SCHOOL BOARD
Petitioners

Versus

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR RESPONDENTS IN OPPOSITION

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IN THE
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October Term, 1977

NO. 77 - 474

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Versus

CITY PARK IMPROVEMENT ASSOCIATION, ORLEANS PARISH SCHOOL BOARD, REGISTRAR, STATE LAND OFFICE, THE CITY OF NEW ORLEANS and THE STATE OF LOUISIANA
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion below bears the No. 7570 of the Docket of the Court of Appeal, Fourth Circuit, State of Louisiana, is dated April 18, 1977, and reported at 345 So.2d 597. This opinion is appended to the Petition for a Writ of Certiorari, Appendix B, pages 15-23.

The Supreme Court of Louisiana denied petitioner's application for writs on July 1, 1977, reported at 347 So.2d 259, and is appended to the instant Petition for a Writ of Certiorari, Appendix C, page 24.

JURISDICTION

Respondents do not question the jurisdiction as set forth in the petition.

QUESTION PRESENTED

Whether the State of Louisiana, through her Legislature, may authorize the exchange of a fractional 16th Section, which 16th Section lies wholly within Orleans Parish, for another parcel of land, lying wholly within the Parish of Orleans, where 14.84% of the Township, within which the fractional 16th Section is located, lies in Jefferson Parish, where the residual rights of the Jefferson Parish School Board in the second parcel of land are fully preserved and protected, and the Orleans Parish School Board is to use the second parcel for public school purposes.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The petitioner purportedly poses two numbered constitutional questions. The first question, in fact, poses no constitutional question.

The second constitutional question set forth in the petition alleges " ... an unlawful taking in contravention of the Fourteenth and Fifth Amendment of the United States Constitution?". Although the petition does not set forth which portion of the said Amendments are being contravened, presumably it is the following:

United States Constitution, Fifth Amendment:

> "... nor shall any person ... be deprived of ... property, without due process of law; ...".

United States Constitution, Fourteenth Amendment, Section 1:

> "... nor shall any State deprive any person of life, liberty, or property, without due process of law; ...".

Respondents contend that the instant petition presents no constitutional questions.

The only Statute of the United States involved in the instant case is the Act of Congress of February 15, 1843, 5 Stat. 600.

STATEMENT OF THE CASE

The facts set forth on page 2 of the petition under the heading of "Opinion Below" and in the second paragraph on page 3 under the heading of "Statement of the Case" are slightly ambiguous.

It is true that Township 12 South, Range 11 East, Southeastern Land District of Louisiana, east of the Mississippi River, lies 85.16% in Orleans Parish and 14.84% in Jefferson Parish. However, 100% of the fractional Section 16 of said Township lies in Orleans Parish.

By 1962 the City Park Improvement Association had utilized the fractional 16th Section as a part of the City Park of New Orleans for more than thirty years, with the knowledge and tacit consent of both the Orleans Parish

School Board and the Jefferson Parish School Board. The purpose of La. Act 405 of 1962 was to exchange the fractional 16th Section, which was a long, narrow strip, for a rectangular parcel of ground, accessible to public transportation, and suitable for use as a school site. A portion of the parcel received in exchange for the fractional 16th Section was obtained by the City of New Orleans from the United States of America, in an Act of Exchange wherein the City of New Orleans acquired a portion of the site which it had formerly transferred to the United States to serve as a portion of the site for the United States Agricultural Experimental Station. The balance of the site was land already owned by the City and dedicated for park purposes. It was not until after the passage of Act 405, and the passage of the various notarial acts of exchange that the Orleans Parish School Board constructed upon the new site, the Kennedy Senior High School. The instant suit was not filed until November 14, 1973, or more than eleven years after the passage of Act 405 of 1962.

Briefly stated, the position of respondents is:

1- Petitioner is guilty of laches in waiting eleven years to attack the validity of Act 405 of 1962.

2- Petitioner, Jefferson Parish School Board, is an agency of the State of Louisiana, and is not a "person" within the purview of the Fifth and Fourteenth Amendments to the United States Constitution.

3- From and after the United States survey in 1873, the title to all 16th Section lands vested in the sovereign State of Louisiana, and were subject to being leased, sold or exchanged pursuant to the laws of the State of Louisiana,

provided, however, that the proceeds thereof would be used for public school purposes for the benefit of the inhabitants of the Township in which the 16th Sections were located. In the instant case, the Legislature of the State of Louisiana authorized the exchange of a fractional 16th Section for another parcel of land, and the rights of the inhabitants of the Parish of Jefferson and the inhabitants of the Parish of Orleans, who lived in the Township in which the 16th Section was located, were carefully preserved.

The foregoing contentions will be more fully covered in the following portions of this brief.

ARGUMENT

A. Historical Background

Prior to 1812, the year in which Louisiana was admitted into the Union as a State, the Congress of the United States reserved the 16th section in every township for public school purposes. See, Acts of Congress, March 2, 1805, c. 26, 2 Stat. at L. 324; Acts of Congress, April 21, 1806, c. 39, 2 Stat. at L. 391; and, Acts of Congress, March 3, 1811, c. 46, 2 Stat. at L. 662. See also, *St. of Louisiana v. William T. Joyce*, 261 Fed. 128 (5th Cir. 1919) cert den. 253 U.S. 484 (1920).

At the time Louisiana was admitted as a State in 1812, the title to the 16th section in each township vested in the State of Louisiana for the use and benefit of public education. Subsequently, the Congress further clarified the title to 16th section lands by an act adopted on February 15, 1843, c. 33, 5 Stat. at L. 600.

The case *sub judice* involves Section 16 of Township 12

South, Range 11 East, Southeastern Land District of Louisiand, east of the Mississippi River. Of this Township, 85.16% thereof lies in Orleans Parish and 14.84% lies in Jefferson Parish. However, all of Section 16 lies *wholly within Orleans Parish*.

The original survey by Ross and Sulakowski, Deputy United States Surveyors, approved by E. W. Foster, Surveyor General for Louisiana on October 20, 1873, showed that the subject Township contained only a fractional 16th section, containing 258.42 acres. Since a full 16th section could not be delivered by the United States to the State, the United States issued indemnity script to the State for that part of the 16th section which was covered by a prior land grant made to Alexander Milne. The indemnity script is not contested in the instant litigation. All of the foregoing facts are contained in an opinion of the Supreme Court of Louisiana, in *Board of Directors v. N.O. Land Company*, 138 La. 32, 70 So. 27 (1915), and are reviewed in *Meyer v. State*, infra.

Because the title to the subject 16th section was clouded by several conflicting chains of title, Louisiana Act 158 of 1910 authorized the School Boards of the various parishes of the state to employ attorneys on behalf of the State of Louisiana, on a contingent fee basis not to exceed 25% of the amount recovered, to bring suits in the name of the State of Louisiana to recover Sixteenth Section lands. Pursuant to the permissive authority of said Act, the Board of Directors of the public schools of the Parish of Orleans on November 18, 1915, and the Board of Directors of the public schools of the Parish of Jefferson on November 9, 1915, entered into an agreement with William Winans Wall, Esquire, and James C. Henriques, Esquire, for a contingent

fee of 25% of the land recovered, to recover for the State of Louisiana Section Sixteen, Township 12 South, Range 11 East. (The same 16th Section involved in the instant litigation).

The aforesaid attorneys then filed, in the name of the State of Louisiana, a suit to recover the subject Sixteenth Section. *State v. New Orleans Land Co.*, 143 La. 858, 79 So. 515 (1918). They were successful in recovering for the State a portion of the fractional 16th Section in this case which established the northern boundary of the Section and recognized the State as titular owner.

Other contemporary cases established remaining boundaries and the title of the State to the lands comprising the fractional 16th Section which is the subject of the present suit. *Leader Realty Company v. Lakeview Land Company* and *Leader Realty Company v. New Orleans Land Company*, 142 La. 169, 76 So. 601 (1917); *Brott v. New Orleans Land Company*, 151 La. 134, 91 So. 653 (1922).

Louisisiana Act 184 of 1928 authorized suits against the State to effect judicial partitions of lands recovered by attorneys on a contingent fee basis, as authorized by Act 158 of 1910, and gave to the transferees of the said attorneys the same right of action.

By an act before Charles Schneidau, Notary Public, dated January 13, 1928, registered in COB 441, folio 49, William Winans Wall and James C. Henriques transferred to J. Hans Meyer all of their right, title, and interest to claims for emoluments under their contracts with the School Boards of Orleans and Jefferson Parishes, and all of their undivided

right, title, and interest in and to a one-fourth interest in the property recovered.

Meyer then instituted proceedings under Act 184 of 1928 for a partition by licitation between the State and himself, as the transferee of Henriques and Wall. The State, acting through the School Boards of Orleans and Jefferson Parishes, contested the action and attacked the constitutionality of both Act 158 of 1910 and Act 184 of 1928, arguing, as does Petitioner in the case at bar, that they are in contravention of the Act of Congress of February 15, 1843, c. 33, 5 Stat. at L. 600, and also of the provisions of the Constitution of the United States, Article IV, Section 3, Clause 2 and Article VI, Clause 2. This case ultimately reached the Supreme Court of Louisiana and is entitled *Meyer vs. State*, 168 La. 146, 121 So. 604 (1929).

It is respectfully submitted that the *Meyer case is completely dispositive of the issues raised by the Petitioner in the case at bar.*

Therein, the Court upheld the validity of Act 158 of 1910 and of Act 184 of 1928 and concluded that *a complete legal title to the subject 16th section vested in the State of Louisiana after the survey of 1871-72, and its official approval in 1873.*

In order to carry out the decree of the Supreme Court in the *Meyer* case, the State, acting through the Orleans Parish School Board and the Jefferson Parish School Board, entered into an Act of Partition with J. Hans Meyer by an act before Robert Legier, late Notary Public, dated June 14, 1929, registered in COB 447, folio 615, by the terms of which *the State received*

> "... as its share in the partition all of the recovered lands lying east of the Orleans Drainage Canal and adjoining Section 15 and designated on the blue print annexed by the letter "A", and shall receive in addition thereto from the said J. Hans Meyer the sum of $20,000 in cash; ..."
>
> The aforesaid act further provides:
>
> "... and that from henceforth the portion of the property firstly described *shall belong exclusively to the State of Louisiana* ..." (underscoring ours)

The portion of the 16th section acquired by the State of Louisiana in the aforesaid partition lay to the north of the then northern limits of the New Orleans City Park.

In the meantime, the City of New Orleans acquired other land lying north of the then existing City Park from the New Orleans Land Company in two acts executed before Robert Legier, Notary Public; the first being dated February 2, 1927, registered in COB 421, folio 400, and the second being dated December 16, 1927, registered in COB 429, folio 533.

The land acquired by the City of New Orleans in the above two acts surrounded the subject fractional 16th Section. Although the title to the 16th Section was never formally transferred from the State, the City Park, with the cooperation of the Orleans Parish School Board, and the Jefferson Parish School Board, incorporated the fractional 16th Section into its plans for the northerly expansion of City Park; and this narrow strip of land, located between

the railroad tracks and Harrison Avenue, extended easterly from the Orleans Drainage Canal, across Marconi Drive, and ran through the golf driving range, Boy Scout Island and across a portion of the City Park No. 1 Golf Course. See, Ordinance of the City of New Orleans, No. 10180 C.C.S., adopted February 9, 1928.

When the need for a Senior High School in the lakefront area of the City of New Orleans became apparent, negotiations were begun with City Park aimed at using the subject 16th Section as a site for said High School. It would not have been in the public interest to erect a school house on the 16th Section land, itself, for the following reasons:

1- The 16th Section was a long narrow strip, and

2- The land was then being used by City Park for the purposes hereinabove enumerated.

3- It was not accessible to public transportation.

These negotiations resulted in the enactment by the Louisiana Legislature of La. Act 405 of 1962, which authorized the State to transfer the subject fractional Section 16 to the City of New Orleans, subject to the management and control of City Park. The Act further authorized the City of New Orleans, in consideration of the foregoing, to transfer to the Orleans Parish School Board a rectangular site in the northern portion of the City Park (which portion of the Park had not yet been developed), with the proviso that the said property would then be dedicated for public school purposes and held by the Orleans Parish School Board for the same purposes, benefits and uses as is presently provided

by law for 16th Section lands. (See, Appendix D of Petition for Writs, p. 25, for the full text of the act).

Following the enactment of La. Act 405 of 1962, the State transferred the fractional 16th Section to the City of New Orleans, and the certificate of title executed by Mrs. Ellen Bryan Moore, Registrar of the State Land Office, was made the subject of an act of deposit before Louis B. Porterie, Notary Public, dated December 6, 1963.

By an act before Ivy A. Smith, Jr., Notary Public, dated November 7, 1963, registered in COB 653, Folio 492, the United States of America, the City and City Park entered into an Act of Exchange.

On the same date, by another act before the same Notary, the City of New Orleans transferred to the Orleans Parish School Board a parcel of ground containing 17.49 acres, portions of which the City had previously acquired from the New Orleans Land Company and a portion of which had just been reacquired by the City from the United States. This notarial act tracked the language of Act 405 of 1962 and dedicated the property for public school purposes; and, provided that it shall be held by the Orleans Parish School Board for the same purposes, benefits and uses as is presently provided by law for 16th Section lands, and its subsequent sale or other disposition, as well as the disbursement of the proceeds of any subsequent sale thereof shall be the same as is presently provided by law for 16th Section lands, and the rights of the Jefferson Parish School Board in said land shall be the same as they were in fractional Section 16, Township 12 South, Range 11 East, Southeastern Land District of Louisiana, East of the Mississippi River.

B. Law

The arguments here being made by the Petitioner were made some 50 years ago in *Meyer vs. State, supra.* In this case the Supreme Court of Louisiana, in connection with the same 16th Section which is the subject of this litigation, said at 121 So. 604,606:

> "It follows necessarily that the State of Louisiana took title to the property in dispute after the approval of the official survey of October 20, 1873.
>
> Since at that date a complete legal title vested in the state, she was no longer bound by the conditions and limitations hitherto placed by the act of Congress of 1843 upon the disposition by her of the sixteenth section in controversy, nor by the statutes of the state enacted thereunder to obtain the consent of the inhabitants of the township or district to a sale of the land at an election duly held. (Statutes cited.) As far as the future disposition of this sixteenth section, after October 20, 1873, is concerned, the state was dealing exclusively with her own property, and was free to pass Act 158 of 1910 and Act 184 of 1928, providing for its recovery upon the basis of a contingent fee, and also for its partition by judicial sale. (Cases cited.)"

Of course, for the very same reasons, La. Act 405 of 1962 is completely valid and constitutional .

The Louisiana Supreme Court in *Meyer*, held that the

State's title to the fractional sixteenth section reserved to it in Acts of Congress of 1806 and 1811, was perfected by the approval of the official survey of that property on October 20, 1873, and that thereafter the State exercised exclusive dominion over that property free of any conditions or limitations imposed by the Act of Congress of February 15, 1843, or any other federal or state law.

The *Meyer* case thus established the principle that title to sixteenth section lands was in the State, and the right and power of the Louisiana Legislature to dispose of those lands, particularly lands of the same fractional sixtenth section involved in the present case was absolute. The right and power of the Legislature to make disposition of that fractional sixteenth section in Act 405 is settled by the *Meyer* case. The *Meyer* case sanctioned transfer by the Louisiana Legislature of part of this fractional sixtenth section to an individual in payment of a fee. Certainly then, the exchange of that fractional 16th section for other lands expressly dedicated to school purposes, as authorized by Act 405, is not subject to attack.

In the notarial act of partition before Robert Legier, Notary Public, dated June 14, 1929, hereinabove referred to, the Petitioner herein formally acknowledged that the State of Louisiana would receive as its share in the partition all of the recovered lands lying east of the Orleans Drainage Canal and adjoining Section 15, (which said lands constitute the fractional 16th Section of this litigation) plus the sum of Twenty Thousand Dollars ($20,000.00) in cash; and further acknowledged *"...that from henceforth the portion of the property firstly described shall belong exclusively to the State of Louisiana..."* (Underscoring ours). This formal

declaration, together with the acceptance of a portion of the cash, completely estops Petitioner from questioning the title of the State, or the right of the Legislature to enact Louisiana Act 405 of 1962. Clearly, the State, through the Legislature, may determine the disposition of land owned by the State.

The Federal Courts, also, have specifically held that the title to 16th Section lands vested in the State, and are subject to legislative disposition, such as is contained in La. Act 405 of 1962. See particularly, *Cooper vs. Roberts* (Mich. 1855) 18 How. 173, 15 L.Ed. 338; *Alabama vs. Schmidt* (1914) 34 S.Ct. 301, 232 U.S. 168; *State of Louisiana vs. William T. Joyce Company*, supra; and *United States vs. Morrison*, 240 U.S. 192, 36 S.Ct. 326 (1916).

The Court's attention is directed to the fact that the rights of the Jefferson Parish School Board were carefully preserved both in Louisiana Act 405 of 1962 and in the Act of Exchange entered into between the City of New Orleans and the Orleans Parish School Board. By the terms of Act 405, and by the terms of the Act of Exchange, the Jefferson Parish School Board has the identical rights in the land for which the 16th Section was exchanged, as it had in the 16th Section; i.e., if the land is ever sold it will receive its portion of the proceeds of the sale.

Petitioner contends that Act 405 of 1962 is null and void on the grounds that the fractional 16th Section in question is held in trust by the State for school purposes and so could not be transferred. From this, Petitioner claims it is entitled to be reimbursed the value of the fractional 16th Section, or that the transfer be entirely set aside.

These contentions of Petitioner are entirely erroneous for the following reasons.

First, the exchange authorized by Act 405 of 1962 does not violate any trust for public school purposes or any rights of Petitioner.

Act 405 of 1962 merely authorized an exchange by which there was transferred to the City of New Orleans a fractional 16th Section located in the middle of City Park in New Orleans, and which, because of its long, narrow, irregular shape and existing use as part of the City Park facilities and golf course, had no practical use for school purposes; and in consideration the Orleans Parish School Board acquired from the City a tract of land, consisting of seventeen acres, fronting on Wisner Boulevard near Robert E. Lee Boulevard, which was highly suitable for school purposes and is being used for those purposes.

Section 4 of Act 405 specifically dedicates to public school purposes the Wisner Boulevard land received in exchange for the fractional 16th Section. Section 5 of Act 405 specifies that the "rights of the Jefferson Parish School Board in said land shall be the same as they were in the Sixteenth Section conveyed in Section 1 of this Act."

Assuming, for the sake of argument, the validity of Petitioner's contentions that the State holds 16th Section lands in trust for school purposes and cannot dispose of them otherwise, Act 405 did not violate that trust. The disposition, or transfer, of the fractional 16th Section land authorized by Act 405 was for public school purposes in that the land received in exchange and as consideration for that transfer was expressly dedicated for public school pur-

poses in Act 405 and in the notarial instruments by which the exchange was accomplished, and the new land received by the school board in that exchange is so being used for public school purposes.

Further, under Act 405, all rights of Petitioner are fully preserved and protected. Petitioner was expressly placed by Act 405 in the same position with respect to the new property on Wisner Boulevard as it had been in with respect to the fractional 16th Section. Petitioner lost nothing, not one right or advantage, by the exchange made pursuant to Act 405.

What are these rights of Petitioner? Petitioner's rights *are residual only* and are limited to sharing in the proceeds of any sale of the 16th Section lands. La. Const. of 1921, Art. XII, Sec. 18 (now L.S.A. - R.S. 41:64). Petitioner had no rights of administration or use of the fractional 16th Section transferred or of the new property acquired for school purposes in the exchange under Act 405. That administration and use belong exclusively to the Orleans Parish School Board. L.S.A. - R.S. 41:638.

The 16th Section in question lies wholly within Orleans Parish. Therefore, even though the Township is partially within Jefferson Parish, the Orleans Parish School Board - *and only the Orleans Parish School Board* - could have used the 16th Section for public school purposes; and the Jefferson Parish School Board could not have prevented it from so doing. Under the provisions of LSA - R.S. 41:631 the Orleans Parish School Board could have tendered to the Registrar of the State Land Office a sum equal to only $1.25 per acre and have received a patent from the State covering the 16th Section. Orleans Parish School Board

could then have erected a school house on the site, and used it for public school purposes. The Jefferson Parish School Board could not have prevented this, since their rights are purely residual ones limited to sharing in the proceeds of any sale of the property. Article XII, Sec. 18, La. Constitution of 1921.

If the fractional 16th Section had been sold, Petitioner would be entitled to share in the proceeds. But no sale has taken place and there are no proceeds to divide. Act 405 authorized an exchange, not a sale. A new property dedicated to school purposes was substituted for the fractional 16th Section and Petitioner's rights in the 16th Section were expressly transferred to the new property.

Should the Wisner Boulevard property be sold at some future time, Petitioner will share in the proceeds of that sale, but that is a future matter. Any claim by Petitioner now, as in this suit, is obviously premature.

C. Distinguishing Cases Cited By Petitioner.

The various cases from other jurisdictions cited in Petitioner's brief are distinguishable on their facts from the present litigation; and further, do not support appellant's attack on Act 405.

Lassen v. Arizona, 87 S.Ct. 584, 385 U.S. 458 (1967) involved acquisition of a right of way by a state highway department through 16th Section lands. No question was raised as to the validity of the taking of the right of way. This Court held, *inter alia*, that actual compensation had to be paid to the State for that right of way in keeping with

the school purposes for which the State held those lands. In *Lassen*, the public school purposes were preserved by requiring compensation to be paid and those funds dedicated to the use of the schools. In the present case, the same public school purposes are accomplished by virtue of dedication to public school purposes of the new lands acquired in the exchange under Act 405.

In *Lassen*, the Supreme Court of the United States found that the action of the State of Arizona violated the provisions of the New Mexico-Arizona Enabling Act. This act was enacted by the United States Congress in 1910, nearly 100 years after Louisiana had already achieved statehood; and 37 years after the State of Louisiana had acquired title to the 16th Section which is the subject of this litigation, and therefore has no application whatsoever to the case at bar.

It should be noted that a portion of the pertinent Enabling Act in *Lassen v. Arizona, supra*, was printed as an appendix at the end of the opinion. Included in that annexed portion of the Enabling Act (87 S.Ct. 584, at pages 591 and 592), is a specific authorization for the State of Arizona to exchange lands owned by it for other lands, public or private, under such regulations as the Arizona Legislature may prescribe. This is certainly a recognition that an exchange fully accomplishes and serves the purposes of any trust for school purposes under which 16th Section lands are held.

Furthermore, in the cited case, the Court found that the State of Arizona's action was violative of its own statutes relative to the disposition of the 16th Section lands, whereas in the case at bar, the action complained of *was taken*

pursuant to a specific statute enacted by the Legislature of Louisiana. Even in the cited case, the Court held that the State of Arizona could, in connection with the sale of 16th Section lands, employ the procedures established by the Arizona State Land Commissioner or "... any other procedures reasonably calculated to assure the integrity of the trust and to prevent misapplication of its lands and funds." 87 S.Ct. 584, 588. It is submitted that in the case at bar the State of Louisiana did exactly that which the Supreme Court of the United States said the State of Arizona could have done, but did not do.

Petitioner relies heavily upon *Alamo Land and Cattle Co., Inc. v. Arizona*, 424 U.S. 295, 96 S.Ct. 910 (1976) (P. 6, et seq.). However, this case is completely inapposite to the issues presented in the case at bar. In *Alamo*, Your Honors simply held that a lessee of school lands had a compensable interest therein when the lands were condemned by the United States. The right of the State of Arizona to lease school lands was upheld, even though the New Mexico-Arizona Enabling Act, June 20, 1910, 36 Stat. 557, as amended, is much more restrictive than the Acts of Congress pursuant to which Louisiana acquired the subject property.

The other three cases relied upon by Petitioner all involved the same basic situation as in the *Lassen* case, and involve states other than Louisiana. *United States v. 78.61 Acres of Land in Dawes and Sioux Cos., Neb.*, 265 F. Supp. 564(1967) involved the condemnation and taking of a right-of-way through school lands by the United States Government for a transmission system. *State v. Walker*, 61 N.M. 374, 301 P.2d 317(1956), concerned the acquisition of a

right-of-way through school lands for highway purposes. In *State v. Central Neb. Public Power & Irr. Dist.*, 8 N.W. 2d 841(1943), the State authorized the granting of an easement over public school lands for irrigation purposes. In each of these cases, the holding of the respective courts was that compensation would have to be paid to the State, as trustee of the school lands, for the right-of-way or easement being taken. In none of those cases was an exchange of one school land for another school land involved. The trust for school purposes in those states was protected by requiring that the monetary compensation be paid and used for school purposes. In the present case, however, the school purposes were accomplished by dedicating to school purposes the new lands acquired in the exchange.

Petitioner's contentions fail for still another reason, however. The absolute right of the State of Louisiana to dispose of its 16th Section lands, in the manner provided by her Legislature, has been established by a long line of cases which have gone unchallenged for nearly fifty years. That right of the State is not subject to attack by Petitioner, particularly in a case such as this where there has been no sale, but rather an exchange by the terms of which other lands dedicated for school purposes are received as the consideration for the transfer of the 16th Section lands.

CONCLUSION

Petitioner has wholly failed to sustain its burden of establishing under Rule 19 that there are special and important reasons why the writ should be granted. The decision below has not decided a federal question of substance not theretofore determined by this Court, nor in a way probably not in accord with applicable decisions of this Court.

All of which is respectfully submitted.

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CERTIFICATE OF SERVICE

I, Samuel I. Rosenberg, the attorney for Orleans Parish School Board, one of the respondents herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that I have this day served copies of the foregoing Brief of Respondents in Opposition on the Petitioner by mailing same in a duly addressed envelope with postage prepaid to its attorneys of record as follows:

TO: JAMES O. MANNING, ESQ.
Post Office Box 7746
Metairie, Louisiana 70010

TO: JACK GRANT, ESQ.
601 Second Street
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New Orleans, Louisiana, this 7th day of December, 1977.

SAMUEL I. ROSENBERG